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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,696	10/12/1999	DONALD K. WRIGHT	21276-9044	5181

7590 11/19/2003

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EXAMINER	
PASCUA, JES F	
ART UNIT	**PAPER NUMBER**
3727	

DATE MAILED: 11/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/415,696	Applicant(s) WRIGHT ET AL.	
	Examiner Jes F. Pascua	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-10,13-19 and 21-26* is/are pending in the application.

4a) Of the above claim(s) *13-17 and 21-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-10,18 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The Filing Of An RCE After A Decision By The Board

2. Claims 1, 4-10, 18 and 19 are rejected under the principles of *res judicata*. See MPEP § 706.07(h).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 18 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 22 of U.S. Patent No. 6,059,457 (previously cited). Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,059,457 anticipates claim 18 of the present application.

5. Claims 1, 4-10 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-21 of U.S. Patent No. 6,059,457 in view of Anderson '113 (previously cited) or Edelman '517. U.S. Patent No. 6,059,457 discloses the claimed device except for the reclosable fastener profile assembly being a continuous supply of first and second profile strips. Anderson '113 and Edelman '517 each disclose that it is known in the art to provide a continuous supply of first and second profile strips of an analogous reclosable fastener profile assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the reclosable fastener profile assembly of U.S. Patent No. 6,059,457 as a continuous supply of first and second profile strips; taught to be desirable by Anderson '113 or Edelman '517 in order to manufacture reclosable bags in an in-line web assembly.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4-10, 18 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tilman '689 for the reason set forth in the Board Decision of 7/11/03.

8. Claims 1, 4-6, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Edelman '517.

9. Claims 1, 4-10, 18 and 19 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Anderson '113 (previously cited).

10. Claim 18 is rejected under 35 U.S.C. 102(e) as being anticipated by Sprehe et al. '457.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1, 4-10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sprehe et al. '457 in view of Anderson '113 or Edelman '517.

Sprehe et al. '457 discloses the claimed device except for the reclosable fastener profile assembly being a continuous supply of first and second profile strips. Anderson '113 and Edelman '517 each disclose that it is known in the art to provide a continuous supply of first and second profile strips of an analogous reclosable fastener profile assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the reclosable fastener profile assembly of Sprehe et al. '457 as a continuous supply of first and second profile strips; taught to be desirable by Anderson '113 or Edelman '517 in order to manufacture reclosable bags in an in-line web assembly.

Response to Arguments

13. Applicant's arguments filed 10/31/03 have been fully considered but they are not persuasive.

Applicant's argument that the Tilman declaration, filed 9/10/03, refutes the Examiner and the Board's conclusion that the spot seal in the Tilman '689 reference is inherently airtight has been considered. However, there is nothing in the Tilman declaration to convince the Examiner that Tilman's definition of "airtight seal" is commensurate with applicant's definition as set forth in the specification of the present

application. In paragraph 6 of the Tilman declaration it states that "[A]n 'airtight seal' is a seal that will at least prohibit the movement of atmospheric pressure, room-temperature air molecules across the seal for an indefinite length of time." Applicant's specification fails to provide any specific definition of an "airtight seal". At best, applicant mentions in the "Summary of the Invention" (page 2, lines 16-17), "Interlocking ribs are included on the profiles to create an airtight reclosable seal which is suitable for a wide range of applications." It appears that applicant's "wide range of applications" for their "airtight seal" is much broader in scope than air molecules at atmospheric pressure and room- temperature as discussed by Tilman.

Finally, applicant's declaration under 37 CFR 1.131, filed on 8/8/01, no longer antedates Anderson '113. The samples of the invention manufactured in April 1998 submitted as evidence on 8/8/01 to establish the date of reduction to practice of the invention fail to show the "fused section substantially flattened to form an airtight seal..., without distorting said ribs of said first and second profile strips outside of said fused section" as currently claimed. The samples provided by applicant clearly show a deformed, transitional area between the fused section and the ribs of the first and second profile strips outside of the fused section.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.

Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP